*THE HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.14837 OF 2006

% 20-07-2006

K.Manemma .. Petitioner

And

$ Municipal Corporation of Hyderabad
Rep. by its Commissioner and another .. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Smt Kavitha Gottipati

^ Counsel for respondents : Sri Rama Rao Ghanta

?CASES REFERRED :

1. 2001(3)ALT 200

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.NO. 14837 OF 2006

DATED 20-07-2006

BETWEEN:

K.Manemma

.. Petitioner

Municipal Corporation of Hyderabad
Rep.by its Commissioner and another

.. Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.NO. 14837 OF 2006

ORDER:

Heard the learned counsel on record.

2. The writ petition is filed for a writ of mandamus declaring the

action of the respondents in refusing to receive and process the petitioner's application for building permission for construction of building in Premises No.1-8-369 and 370, Chikkadpally, Hyderabad as it is not accompanied with No objection Certificate and basing upon the entry in TSLR as illegal, arbitrary and violative of principles of natural justice and consequently direct the respondents to receive and process the application for building permission without insisting No objection certificate and without reference to entry in TSLR and to pass such other suitable orders.

3. It is stated that the petitioner is the absolute owner and possessor of the house property bearing No.1-8-369 and 370, admeasuring 70.53 sq. meters situated at Chikkadpally, Hyderabad having inherited from her husband late K.Yadaiah. It is stated that originally one J.Venkata Rao purchased the said property through registered sale deed bearing document No.194 of 1945 from one Charlapali Brahmaiah and said Venkat Rao in his turn sold the same in favour of her mother in law by name K.Yellamma through a registered sale deed bearing document No.2315 of 1955 for valid consideration. Thereafter, the said property devolved upon her husband late K.Yadaiah as he was the only son of late Yellamma and her husband died on 17.01.1998. As such the petitioner became the owner of the subject property and her name was also mutated in the Municipal records as owner and she has been regularly paying the property tax to the respondent corporation. The sale deed bearing No.194 of 1945 and also the sale deed bearing No.2315 of 1955 and the death certificate of the husband of the petitioner also are filed along with the writ petition

by way of material papers. It is further stated that the petitioner intends to construct a new house by demolishing the existing house which is aged more than 60 years and for that purpose she approached the respondent corporation in the first week of July, 2006 with an application seeking for permission for construction of ground plus first floor in the said property. But surprisingly, the second respondent who is the competent authority refused to receive the building applications up to three floors, refused to receive the same on the pretext that her building application was not accompanied with No objection Certificate issued by the revenue authorities and by saying that in TSLR her property was recorded as Government land. It is also stated that there is no requirement of production of No objection Certificate either in The Hyderabad Municipal Corporation Act or the relevant building bye-laws.

4. As far as No objection certificate from revenue authorities is concerned, there cannot be any doubt or controversy that it is not necessary. The only question that may have to be decided is in relation to the entries in TSLR. As far as entries in TSLR are concerned, the learned Judge of this Court in **HYDERABAD POTTERIES PVT. LTD. V COLLECTOR, HYDERABADDISTRICT AND ANOTHER**[1] at Para 20 observed as follows:

> *A bare reading of scheme of the A.P. Survey and Boundaries Act, 1923 would make it clear that the survey made under the said Act is mainly intended for the purposes of identification of the lands and fixation of boundaries. There is no provision under the Act intending to make any detailed enquiries with regard to the right, title and interest of the persons in*

the land. It is neither the object nor the scheme of the said Act. There is no presumption that every entry made in the TSLR shall be presumed to be true until contrary is proved as in the case of entries made in the record of rights under the provisions of A.P. Record of Rights in Land Act, 1971. it is not a record of right. There is no such provision in the Andhra Pradesh Survey and Boundaries Act, 1923.

Reliance was also placed on the decision in Writ Appeal No. 10961 of 2001, dated 24th December, 2001. In Writ Petition No.19763 of 2005 the learned Judge of this Court after referring to the decision in Hyderabad Potteries Pvt.Ltd (one supra) expressed the view that the action of the 4th respondent – commissioner, Municipal Corporation of Hyderabad in not entertaining the petitioner's building permission based on entry in TSLR cannot be justified and accordingly the writ petition was disposed of directing the 4th respondent to entertain the petitioners application for building permission and pass appropriate orders in accordance with the provisions of the Hyderabad Municipal corporation Act and the Rules governing thereto. Hence, it is clear that the entries made in TSLR cannot be said to be the sole basis and the corporation authorities are bound to consider all the relevant documents and arrive at a conclusion. Hence, on that ground alone refusal to entertain the application cannot be justified.

5. The Municipal Corporation Building Bye Laws 1981 in G.O.Ms.No.905, Housing Administration and Urban Development (M.A) 7th August, 1981 were made in exercise of the powers conferred by Section 589 of the Hyderabad Municipal Corporation

Act, 1955 (Act II of 1956) the Governor of Andhra Pradesh had accorded sanctions to the building bye laws approved by the General Body of the Municipal Corporation of Hyderabad in its ResolutionNo.561, dated the March, 1981 and made by the said Corporation under the powers conferred by Sub-sections (2), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (20) and (48) of Section 586 of the said Act, in super session of the Hyderabad Municipal Corporation (Building) Bye-laws, 1972 issued with G.O.Ms.No.763, M.A., dated 4.10.1972 and published at page 128-193 of Part II of the rules supplement in the Andhra Pradesh Gazettee dated 24.5.1973, the same having been published in the manner specified in Section 58 of the said Act. Bye-law 4.2. deals with application for Building Permit and 4.2.(v) dealing with ownership title, reads as under:

> *4.2(v) Every application for building permit shall be accompanied by the following as proof of Ownership;*
>
> *(a) attested copy of the original sale/lease deed: and*
>
> *(b) attested copy of Revenue Survey sheet/Municipal Survey Sheet with Mutation Record No.; or*
>
> *(c) affidavit or other documents acceptable to the Commissioner, MCH*

As can be seen from the clause (v) of Bye-law 4.2 of the Bye-laws referred to supra several documents had been referred to including the affidavit or several documents acceptable to the Commissioner, MCH.

6. In the light of the same, refusal to receive or entertain the

application merely on the ground of TSLR entries may not be sustainable in the event of the applicant being able to satisfy the ownership, title and legal possession in relation to the property in question.

7. Therefore, in view of the same, the writ petition is disposed of with a direction to entertain the application of the petitioner for building permission in relation to the subject matter of the writ petition without insisting No objection certificate from Revenue authorities and further considering the other documents which may be placed along with the application relating to the title and possession and to dispose of the same in accordance with law.

8. With the above direction, the writ petition is disposed of. No order as to costs.

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20-07-2006

L.R copy to be marked.

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[1] 2001(3)ALT 200